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Wills -- Construction -- Words of Limitation

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be levied.[27] For such tax there need be no property within the jurisdiction of the state. There is no conflict under this type of tax, with the Rhode Island Hospital Case since there the franchise was "the right to do business," granted to the corporate entity and not the stockholders.

It is desirable that the domestic inheritance tax on foreign held shares be declared invalid. Reciprocity arrangements among the great majority of the states have reduced the revenue thus derived to a mere pittance.[28] The only effect this tax seems to have is to hamper the administration of decedents' estates consisting partly of corporate stock and to increase the tendency to conceal intangible assets.[29]

HARRY ROCKWELL.

Wills—Construction—Words of Limitation

The residuary clause of a will gave the testator's wife the residue of the property "to be used by her so long as she lives and enjoys the same." *Held:* that the widow gets fee title.[1]

The absence of words of inheritance is not fatal to the creation, by will, of an estate in fee,[2] although, at common law, a general devise without words of limitation carried only a life estate.[3] As a general rule, a devise of the residue of an estate is presumed to pass

4 THOMPSON, CORPORATIONS, (3d ed. 1927) §§2919-2920; but *cf.* Bank of California v. San Francisco, 142 Cal. 276, 75 Pac. 832, 64 L. R. A. 918 (1904).

[27] What is meant here is an annual tax upon the franchise, not upon the theory that the franchise is property within the state, but in the nature of a license tax upon the privilege of being a corporation within the taxing state. Such a tax is analogous to one levied upon a non-resident for a license to drive an automobile upon the highways of the taxing state.

[28] In 1928, twenty-two states levied inheritance taxes upon intangibles of non-residents. Florida, Alabama, District of Columbia, and Nevada have no inheritance tax laws. Eight states allow absolute exemption to such property. Twelve states belong to reciprocity groups, while Idaho, New Mexico, Nebraska, and Wyoming do not generally exercise their right to tax property of this type. See report of the Tax Commission of North Carolina (1928) at page 521.

[29] See Report of the Tax Commission of North Carolina (1928) pages 505-6 where instances of delay in administration of estates, causing shrinkage in values of property are cited.

[1] Pfeifer v. Wright, 34 F. (2nd) 690 (N. D. Okla. 1929).

[2] *In re* Kidd's Estate, 293 Pa. 21, 141 Atl. 644 (1928).

[3] 1 TIFFANY, REAL PROPERTY (2nd ed. 1920) 76. But see the interesting case of Willcut v. Calinan, 98 Mass. 75 (1867) (a devise of a tomb and other real property was held to be in fee in spite of the absence of words of inheritance, the court reasoning that the testator did not intend for the devisee to take a mere life estate in a burial place.

the fee where no words of limitation are used.[4] Thus the words "give and devise," or either of them, have been held sufficient to carry the fee.[5] The confusion arises when the testator has added words which appear to qualify or limit the estate devised, as for example: to *W*, to hold and enjoy as she thinks best,[6] to *W*, to have full control,[7] to *W*, by her to be fully possessed and enjoyed.[8]

The ambiguity of such words, standing alone, is obvious. The true intent of the testator can be obtained only by the application of one or more of the recognized rules for the construction of wills. Thus, the devise, "to *W*, to hold for her natural life," was held to carry the fee where it did not clearly appear by the will that the testator intended to convey a less estate,[9] while similar words, in another case,[10] were construed to pass only a life estate, since other provisions of the will showed an intent to devise to others subject to *W's* life interest. Applying the rule that words repugnant to what appears to be a devise in fee will not have the effect of reducing the character of the estate, devises, to *W*, her heirs and assigns, *for her lifetime*,[11] to *W*, in fee simple *for life*,[12] to *W*, *for her lifetime*, to manage and dispose of as she may see cause,[13] were construed as passing fee title.

In construing the language of a will, an interpretation which will prevent a partial intestacy is desirable, and, at times, the courts seem willing to go out of the way in order to attain it. Thus the words, "as long as life doth last," have been interpreted as tantamount to "forever,"[14] and, in the principal case, the clause, "to be used by her so long as she lives and enjoys the same," was construed to be simply the expression of a desire on the part of the testator that the widow might enjoy the estate. The result in the principal case was obtained with greater ease by reason of the fact that the complainant, an illegitimate daughter, had been substantially remembered in other articles of the will.

THOMAS W. SPRINKLE.

[4] Carter v. Gray, 58 N. J. Eq. 711, 43 Atl. 711 (1899).
[5] Burr v. Tierney, 99 Conn. 647, 122 Atl. 454 (1923).
[6] Johns v. Johns, 86 Va. 333, 10 S. E. 2 (1889) (life estate).
[7] Melies v. Beatty, 313 Ill. 418, 145 N. E. 146 (1924) (fee).
[8] Wheaton v. Andress, 23 Wend. 452 (1840) (life estate).
[9] Boston Safe-Deposit & Trust Co. v. Stich, 61 Kan. 474, 59 Pac. 1082 (1900).
[10] Keplinger v. Keplinger, 185 Ind. 81, 113 N. E. 292 (1916).
[11] Lambe v. Drayton, 182 Ill. 110, 55 N. E. 189 (1899).
[12] McAllister v. Tate, 11 Rich. L. (S. C.) 509, 73 Am. Dec. 119 (1818).
[13] Alsip v. Morgan, 33 Ky. 72, 109 S. W. 312 (1908).
[14] *In re* Brown, 119 Kan. 402, 239 Pac. 747 (1925), noted (1926) 24 MICH. L. REV. 518.